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Afternoon Session

Agenda Item 3b. Challenges faced by young and small competition agencies in the design of merger control

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Challenges in Developing a Merger Regulatory Regime in Young Agencies

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"A Kenyan economy with globally efficient markets and enhanced consumer welfare for shared Prosperity"

Background

- **Competition Authority of Kenya commenced operations on 1st August, 2011**
- **Mandate includes Regulation of Market structure (Merger regime); regulation of market conduct (Unilateral and Concerted practices)**
- **Suspensory merger regulatory regime**
- **All mergers (horizontal, vertical and conglomerate)**
- **A total of 510 mergers handled for the past 5 years (average of 100 per year)**

Challenges



A. Developing an optimal legal Framework

- Horizontal? Vertical? Conglomerate? Or all forms of mergers?
- Non-suspensory or suspensory regime?
- Thresholds or no thresholds regime?
- Setting timelines for finalization of mergers applications or not?
- Criteria= public interest and competition assessment; balancing the two

Challenges cont'd

B. Balancing different national economic policies
goals industrial policy (Tarlochan and Pan Paper merger); **employment policy** (Britam and Real Insurance Merger); **Investment policy** versus the **Competition policy**

C. Resources

- ▶ Inadequate Human capital and skills;
- ▶ Budget constraints

Challenges cont'd

D. Information asymmetry

Credibility of the data/information

Accessibility of the data

E. Informal Sector

The large informal sector and the competitive pressure on formal business

Difficult in defining markets/market shares

(Buzeki and Brookside mergers)

Conclusion

Young Agencies may learn from: –

- ▶ The Developed Agencies
- ▶ ICN programmes
- ▶ Enhanced cooperation